Tax," 32 HARV. L. REV. 587, 628. The state cannot reasonably urge that value incidentally imparted to the stock by the state's protection of corporate realty is ground for taxation. Nor did the mere presence of the certificate within the state make its transfer taxable. *Kennedy* v. *Hodges*, 215 Mass. 112, 102 N. E. 432; *People* v. *Griffith*, 245 Ill. 532, 92 N. E. 313. But see *People* v. *Reardon*, 184 N. Y. 431, 77 N. E. 970; *Stern* v. *Queen*, [1896] 1 Q. B. 211.

TAXATION — PARTICULAR FORMS OF TAXATION — TAX ON ALL USE AS AN EXCISE TAX. — A statute provided that every one engaged in the business of owning or storing distilled spirits in bonded warehouses, or removing them therefrom, should pay a license tax for each gallon stored or removed from bond or transferred under bond out of the state. (1920 ACTS OF KENTUCKY, c. 13.) The state constitution provided that "taxes shall be uniform upon all property of the same class subject to taxation." (KENTUCKY CONSTITUTION, § 171.) The plaintiff, owner of a large quantity of whiskey stored in bonded warehouses, sued to enjoin collection of the tax, on the ground of unconstitutionality. Distilled spirits had not been made a special class for property taxation. *Held*, that the statute was unconstitutional. *Craig* v. *E. H. Taylor, Jr., & Sons*, 232 S. W. 395 (Ky.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 70.

TAXATION — WHERE PROPERTY MAY BE TAXED — EQUITABLE INTEREST OF RESIDENT *CESTUI* IN FOREIGN TRUST OF INTANGIBLES. — Resident *cestuis* were taxed in Vermont on their interest in certain intangible property held in trust for them by a Massachusetts trustee. It was conceded that the property was taxable in Massachusetts. *Held*, that the tax was properly levied. *City of St. Albans* v. *Avery*, 114 Atl. 31 (Vt.).

Although on strict legal theory a tax is not unconstitutional simply because it results in duplicate taxation, that result was one of the considerations which led the Supreme Court to hold that a tax at the domicil of the owner on tangible personalty with an extra-state *situs* violates the due process clause. *Union Refrigerator Co.* v. *Kentucky*, 199 U. S. 194. But the court has upheld a tax at the domicil of the owner on intangible property having also an extra-state "business *situs*." *Fidelity Trust Co.* v. *Louisville*, 245 U. S. 54. See 31 HARV. L. REV. 786. One consideration behind this decision is that unless the general rule allowing a tax at the domicil of the creditor is upheld indiscriminately, much intangible property is likely to escape taxation altogether. See *Union Refrigerator Co.* v. *Kentucky*, *supra*, at 205. In the principal case it is almost certain that the fund will be taxed at the domicil of the creditor-trustee; and the actual decision exposes it to duplicate, or if there is a "business *situs*" in a third state, to triplicate taxation. Decisions in state courts are in accord with the principal case. *Hunt* v. *Perry*, 165 Mass. 287, 43 N. E. 103; *Wise* v. *Comm.*, 122 Va. 693, 95 S. E. 632. But whether practical considerations will cause the Supreme Court to grant relief depends upon the question how great the hardship must be before strict legal theory will bend to the economic good. The principal case lies close to the line. The Supreme Court has upheld a tax on the income from similar property. *Maguire* v. *Tax Commissioner*, 230 Mass. 503, 120 N. E. 162; aff'd 253 U. S. 12. But income tax decisions are not authority for other tax cases.

TORTS — NEGLIGENCE — DUTY OF CARE — LIABILITY OF OCCUPIER OF PREMISES TO TRESPASSER. — A springboard attached at its base to the property of the defendant railroad, extended out for several feet over the waters of a public river. The plaintiffs' intestate, swimming in the river with

others, climbed upon the springboard, and was standing on its end, about to dive; when through lack of ordinary care on the part of the defendant, a pole supporting high-tension wires over its premises gave way. The wires struck the plaintiffs' intestate and swept him into the river, causing his death. His representatives sued, under a statute, for negligently causing his death. *Held*, that they be allowed to recover. *Hynes* v. *New York Central R. Co.*, 131 N. E. 898 (N. Y.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 68.

WILLS — PROBATE — LOST AND DESTROYED WILLS. —A statute provided that no will should be probated as a lost or destroyed will unless its existence at the time of the testator's death or its fraudulent destruction during his lifetime was proved. (1916 CAL. CODE CIV. PROC. § 1339.) Testatrix executed and kept in her possession a will, which was not found at her death. It was known to have existed seventy days before her decease, and her declarations during the last days of her life that she believed it then existed, were accepted in evidence. *Held*, that the will be probated as a lost will. *In re Sweetman's Estate*, 195 Pac. 918 (Cal.).

Statutory requirements similar to the one involved are common. See 1907 MONT. REV. CODE, § 7415; 1915 IND. STAT. § 3167; 1920 N. Y. CODE CIV. PROC. § 1865. Unless fraudulent destruction is established, actual existence at the testator's death must be proved. *Estate of Johnson*, 134 Cal. 662, 66 Pac. 847; *Estate of Patterson*, 155 Cal. 626, 102 Pac. 941; *Timon* v. *Claffy*, 45 Barb. (N. Y.) 438. The proof of such existence varies. Where the will is lost in the hands of a third person, since the testator has had no access to it and no presumption of revocation is raised, the will by presumption continues to exist. *Schultz* v. *Schultz*, 35 N. Y. 653; *Matter of Cosgrove*, 31 Misc. 422, 65 N. Y. Supp. 570. In the principal case the proof of existence is yet more tenuous. If a will, always in the testator's control, is not found among his papers at death, it is presumed that he destroyed it *animo revocandi*. *Matter of Kennedy*, 167 N. Y. 163, 60 N. E. 442; *Stetson* v. *Stetson*, 200 Ill. 601, 66 N. E. 262. See 1 JARMAN, WILLS, 6 ed., 152. To rebut this presumption, the testator's declarations are admitted. *In re Steinke's Will*, 95 Wis. 121, 70 N. W. 61; *Miller's Will*, 49 Or. 452, 90 Pac. 1002. See 1 UNDERHILL, LAW OF WILLS, § 277. *Contra, In re Colbert's Estate*, 31 Mont. 461, 78 Pac. 971. Then, this presumption being eliminated, by virtue of the presumption of continuing existence, existence at the testator's death is established. See 1916 CAL. CODE CIV. PROC., § 1963, (32). This result is logical, but technical and unsatisfying. Presumptions are apt to shelter rather than combat fraud. To approach a statutory provision, intended to prevent fraud, by so artificial a path of proof, is to fly in the face of its purpose. Far better strip each presumption to its core of reason and let the jury or trial court, weighing these cores as bits of evidence together with other bits of evidence, determine the fact of existence.

WILLS — REVOCATION — REVOCATION BY MARRIAGE. — The testator made a will bequeathing property to his fiancée, whom he married two days later. A statute provided that a marriage shall be deemed a revocation of a previous will. (1917 ILL. REV. STAT., c. 39, § 10.) Evidence was introduced of the fact that the will was made in contemplation of the marriage. *Held*, that the will was revoked. *Wood* v. *Corbin*, 296 Ill. 129, 129 N. E. 553.

In a case where the will showed on its face that it was made in contemplation of marriage, this court reached the opposite result. *Ford* v. *Greenawalt*, 292 Ill. 121, 126 N. E. 555. See 34 HARV. L. REV. 95. By the construction there given to the Illinois statute, its operation is like that of statutes expressly